

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 3773  
OFFERED BY M \_\_\_\_.**

At the appropriate place in the bill insert the following new section:

**1 SEC. \_\_\_\_ . LIABILITY DEFENSE.**

2       (a) Notwithstanding any other provision of law, and  
3 in addition to the immunities, privileges, and defenses pro-  
4 vided by any other provision of law, no action, claim or  
5 proceeding shall lie or be maintained in any court, and  
6 no penalty, sanction, or other form of remedy or relief  
7 shall be imposed by any court or any other body, against  
8 a provider of telecommunications, electronic communica-  
9 tion or remote computing service, or its employees, offi-  
10 cers, or agents, for any activity during the period begin-  
11 ning on September 11, 2001, and ending on the date of  
12 enactment of this Act about which the Director of Na-  
13 tional Intelligence certifies to the court that the provider  
14 either (1) did not provide any of the information, assist-  
15 ance or facilities alleged, or (2) to the extent any informa-  
16 tion, assistance or facilities were provided, they were pro-  
17 vided (A) pursuant to a written authorization from the  
18 head (or deputy head) of a department or a federal intel-

1   ligence agency indicating that such activities had been ap-  
2   proved by the President and that such activities were law-  
3   ful, and (B) in connection with a communications intel-  
4   ligence program authorized by the President after Sep-  
5   tember 11, 2001, designed to identify, track or intercept  
6   the communications of international terrorist organiza-  
7   tions in order to detect or prevent terrorist attacks against  
8   the United States. The certification may be provided in  
9   a manner consistent with the protection of military and  
10  state secrets.

11       (b) This section shall apply to all such actions, claims  
12  or proceedings pending on or after the effective date of  
13  this Act.

14       (c) Any such action, claim or proceeding that is  
15  brought in a State court shall be deemed to arise under  
16  the Constitution and laws of the United States and shall  
17  be removable pursuant to section 1441 of title 28, United  
18  States Code.